IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 513 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMUBEN M RAVJI

Versus

RAJNIKANT K SHAH

Appearance:

MR PC KAVINA for Petitioners

NOTICE SERVED for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/09/2000

ORAL JUDGEMENT

This revision under Section 401 CrPC has been preferred by the accused in Criminal Case No. 3025 of 1983 pending before the learned Metropolitan Magistrate,

Court No. 5, Ahmedabad. A criminal case has been registered pursuant to the complaint filed by one Rajnikant K. Shah. It was alleged that complainant had purchased milk powder from the accused which was found to be sub-standard. It was also alleged that the said milk powder was purchased by the accused nos. 1 & 2 from the accused no. 3 - Indian Dairy Entrepreneurs Agricultural Company Limited situated at Jaipur. However, since the said accused no. 3 could not be served, the name of the accused no. 3 was deleted and the case proceeded against the accused nos. 1 & 2 - the present applicants. In course of trial, the complainant made an application to issue witness-summons to the Manager of the aforesaid Indian Dairy Entrepreneurs Agricultural Company Limited. It was contended that certain correspondence between the accused nos. 1 & 2 and the said Company was required to be proved by examining the manager of the said Company. The application was rejected by the learned trial Judge under his order dated 27th May, 1986. Feeling aggrieved, the complainant preferred Criminal Revision Application No. 180 of 1986 before the Sessions Court, Ahmedabad. The learned Addl. City Sessions Judge, Court No. 9, Ahmedabad by his judgment and order dated 12th September, 1986 allowed the application and directed the trial Court to permit the complainant to examine the witness for which he had applied for and to issue the summons on the said witness. Feeling aggrieved, the accused have preferred the present revision. Pending this revision application, further proceedings in the trial have been stayed.

It is contended that the order in question passed by the trial Judge was interlocutory in nature and no revision would lie against such order. I see no substance in this contention. The interlocutory order referred to in Section 397 CrPC means those orders which are passed in course of the trial at an interlocutory stage to advance the cause of justice for final determination. The order which takes away the right of the complainant to establish a fact before the Court can be said to be intermediary but not interlocutory, as envisaged under Section 397 CrPC. The learned Addl. Sessions Judge was perfectly right in entertaining the revision application. Besides, the order permitting a witness to be summoned before the Court would necessarily be an interlocutory order which does not decide the rights of the parties in either way. Such an order being interlocutory in nature, no revision would lie against such order. In my view, therefore, the present revision application filed against the order permitting the witness to be summoned is not maintainable.

Revision application is dismissed. Rule is discharged. Interim relief is vacated. The registry will send the writ forthwith. Considering the date of the criminal case, the learned Metropolitan Magistrate, Court No. 5 will give due precedence and comply with the direction issued by the learned Addl. City Sessions Judge, Court No. 9, Ahmedabad on 12th September, 1986 forthwith.

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Prakash*